

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R005-08

February 8, 2008

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-12, NRS 459.826 and 459.830.

A REGULATION relating to containment systems; requiring an owner or operator of an underground storage tank to install a secondary containment system for the underground storage tank under certain circumstances; requiring the keeping of certain records relating to the containment system; requiring the installation of an under-dispenser container for all new motor fuel dispensers; exempting underground storage tanks and motor fuel dispensers which are not located within a certain distance from a public water system or well containing potable water; and providing other matters properly relating thereto.

Section 1. Chapter 459 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *“Motor fuel” means petroleum or a petroleum-based substance in the form of motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol that is typically used in the operation of a motor engine.*

Sec. 3. *“Secondary containment system” means a system of release prevention and detection consisting of a separate inner and outer barrier designed to contain a regulated substance together with a means of monitoring the interstitial space.*

Sec. 4. *“Under-dispenser container” means a container that is installed under a motor fuel dispenser which is used in connection with an underground storage tank and is designed to prevent dispenser leaks from reaching soil or groundwater.*

Sec. 5. *An owner or operator of an underground storage tank who is required to implement a secondary containment system for that underground storage tank pursuant to sections 6 and 7 of this regulation shall:*

1. Ensure that the secondary containment system:

(a) Contains regulated substances that are released from the underground storage tank until they are detected and removed;

(b) Prevents the release of regulated substances into the environment at any time during the operational life of the underground storage tank; and

(c) Operates with interstitial monitoring that meets the requirements of 40 C.F.R. § 280.43(g);

2. Check, or cause to be checked, for evidence of a release from the underground storage tank at least every 30 days and maintain records of the operation of the secondary containment system for at least 1 year;

3. Notify the Division before the installation or replacement of an underground storage tank and provide to the Division the proposed method of secondary containment planned for use;

4. Maintain records of the installation, maintenance and monitoring of the secondary containment system in accordance with the following schedule:

(a) Records of 30-day release monitoring must be maintained for not less than 1 year;

(b) All written claims of performance, including any schedules of required maintenance or calibration for the secondary containment system and its monitoring system must be maintained for not less than 5 years after the date of installation; and

(c) All calibration, maintenance and repair of release detection equipment permanently located on-site must be maintained for not less than 1 year; and

5. Upon request, make available for review by the Division records of the installation, maintenance and monitoring of the secondary containment system.

Sec. 6. 1. *Except as otherwise provided in subsection 2 and section 9 of this regulation, a secondary containment system is required on all underground storage tanks installed on or after April 1, 2008.*

2. The provisions of subsection 1 do not apply to underground storage tanks existing at a facility before April 1, 2008, which may be connected by piping or coupled through a manifold to the new underground storage tank.

Sec. 7. 1. *Except as otherwise provided in subsections 2 and 4 and section 9 of this regulation, a secondary containment system is required for any existing underground storage tank which is replaced, including the replacement of any piping that constitutes a portion of the underground storage tank regardless of whether the piping is replaced in conjunction with or separately from other portions of the underground storage tank.*

2. The provisions of subsection 1 apply solely to those portions of an underground storage tank that are replaced and not to any other portion that remains in place, including any other underground storage tank that is connected to the replaced tank by piping or coupled through a manifold.

3. Piping is not considered to be replaced for purposes of this section unless the entire amount of a run of piping from one component to another component of the underground storage tank is replaced, including, without limitation, a component consisting of an individual tank, dispenser or piece of ancillary equipment.

4. The provisions of subsection 1 do not apply to any repairs not involving replacement that are intended to restore an underground storage tank to operating condition.

Sec. 8. 1. Except as otherwise provided in section 9 of this regulation, an under-dispenser container is required for all motor fuel dispensers that are installed on or after April 1, 2008, at a location where there was no previous dispenser or at a location to replace an existing dispenser and the equipment used to connect the dispenser to the underground storage tank is replaced.

2. An under-dispenser container must:

(a) Be liquid-tight on its sides, bottom and at any penetrations;

(b) Be compatible with the substance conveyed by dispenser piping;

(c) Allow for monitoring and visual inspection and access to the components in the containment system; and

(d) At all times, be made available for inspection by the Division.

Sec. 9. 1. An owner or operator is not required to implement a secondary containment system pursuant to sections 6 and 7 of this regulation or to install an under-dispenser container pursuant to section 8 of this regulation if the owner or operator submits to the Division a study approved by the Division which demonstrates that the newly installed or replaced portions of an underground storage tank or motor fuel dispenser is not within 1,000 feet of a public water system or a well containing potable water.

2. The distance required pursuant to subsection 1 must be measured from the closest part of the new or replaced underground storage tank or new motor fuel dispenser to the closest part of the nearest public water system or the wellhead of the nearest well containing potable water.

3. As used in this section:

(a) *“Public water system” has the meaning ascribed to it in NRS 445A.235.*

(b) *“Well containing potable water” means any hole that is dug, driven, drilled or bored that extends into the earth until it meets groundwater which:*

(1) Supplies water for a noncommunity public water system; or

(2) Otherwise supplies water for household use, including, without limitation, drinking, bathing and cooking.

Sec. 10. NAC 459.9921 is hereby amended to read as follows:

459.9921 As used in NAC 459.9921 to 459.999, inclusive, *and sections 2 to 9, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 459.9922 to 459.9929, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 11. NAC 459.999 is hereby amended to read as follows:

459.999 If any provision of NAC 459.9921 to 459.999, inclusive, *and sections 2 to 9, inclusive, of this regulation* or the application of any such provision to any person, thing or circumstance is held invalid, it is intended that the invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

Sec. 12. NAC 459.99925 is hereby amended to read as follows:

459.99925 1. Except as otherwise provided in this section, for an applicant to be eligible for a loan from the Fund with respect to a property, the property must contain the site of a release of a hazardous substance, pollutant or petroleum product and qualify as a brownfield site.

2. An applicant may be eligible for a loan from the Fund with respect to a disposal site only if the Division determines that:

(a) The disposal site poses a threat to human health or the environment because of the presence of a hazardous substance and presents a danger to human health beyond any physical hazards that may be present at the disposal site;

(b) The disposal site was closed before the enactment of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; and

(c) Corrective action is not required by the Division pursuant to NAC 444.7481 to 444.7499, inclusive.

3. An applicant is not eligible for a loan from the Fund with respect to a property which is eligible for funding pursuant to NAC 590.700 to 590.790, inclusive, or is otherwise subject to NAC 459.9921 to 459.999, inclusive, *and sections 2 to 9, inclusive of this regulation*, unless:

(a) The loan will be used for corrective action on the property exclusively to address a hazardous substance which is distinct from, and not commingled with, petroleum contamination that is eligible for reimbursement pursuant to NAC 590.700 to 590.790, inclusive;

(b) The Division determines that the applicant is not eligible for funding pursuant to NAC 590.700 to 590.790, inclusive, for petroleum contamination on the property and:

(1) The applicant did not cause or contribute to the release of petroleum products; and

(2) The cleanup of the petroleum contamination would protect human health and the environment and result in the redevelopment of the site; or

(c) The loan will be used to continue the remediation of a hazardous substance commingled with petroleum contamination after the issues relating to the petroleum contamination have been mitigated.

4. As used in this section, “disposal site” has the meaning ascribed to it in NRS 444.460.